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CELA

FIRST GENERAL COUNSEL'S REPORT

Pre-MURs 563 & 564

DATE SUBMITTED: 8/14/13 & 8/28/13

DATE RESPONSES RECEIVED: 8/28/13, 9/9/13,
11/21/13, 11/22/13, and 12/2/13

DATE ACTIVATED: 12/9/13

EXPIRATION OF SOL: 8/14/08 - 12/15/17¹

ELECTION CYCLES: 2008 - 2012

SOURCE:

Sua Sponte Submissions

RESPONDENTS:

National Air Transportation Association ("NATA")
National Air Transportation Association PAC
and Jason Miller² in his official capacity as
Treasurer ("NATA PAC" or the "PAC")
Eric Byer, former NATA VP

Current NATA Employees:³

Shannon Chambers

Mike France

Amy Hornaday

Rebecca Mulholland

Johanna O'Toole

¹ NATA, NATA PAC, and several of the individual respondents currently employed by NATA have signed tolling agreements that extend the statute of limitations as to them. Several former NATA employees, including James Coyne and Alan Darrow, have not agreed to toll the statute of limitations.

² Jason Miller replaced Michael Delk as Treasurer of NATA PAC, effective July 17, 2013. See NATA PAC, Amended Statement of Organization (July 17, 2013).

³ The Submission alleges that each of the current and former NATA employees identified here served as a conduit in connection with the contribution reimbursement program disclosed in the Submission, with the exception of James Coyne and Michael Delk. All of the current NATA employees identified above joined in NATA's Submission. See NATA Submission, App. G, Letter from Lars Liebler, Esq. to Jeff Jordan, Supervisory Attorney FEC, Aug. 15, 2013. CELA notified Coyne, Darrow, and Delk based on their stature as senior NATA and/or NATA PAC officers who allegedly engaged in the conduct described in the Submission. See Letter to James Coyne from Jeff Jordan, CELA (Aug. 21, 2013); Letter to Alan Darrow from Jeff Jordan, CELA (Aug. 21, 2013); Letter to Michael Delk from Jeff Jordan, CELA (Aug. 21, 2013). As to Joseph Burnside, although the Submission indicated that he continued to act in connection with the allegations in the Submission as late as October 2008, in fact, Burnside had no role at NATA after December 2003. Accordingly, the limitations period for the last conduit contribution made in Burnside's name expired on October 15, 2008, and for any potential violations as a corporate officer expired on December 31, 2008. We, therefore, recommend that the Commission take no action concerning potential violations of Burnside as a NATA officer.

Jacqueline Rosser

Former NATA Employees:

James Coyne, former NATA President/CEO

Alan Darrow, former NATA VP

Joseph Burnside, former NATA VP

Michael Delk in his personal capacity as
former NATA PAC Treasurer

RELEVANT STATUTES
AND REGULATIONS:

2 U.S.C. § 434(a)(1)

2 U.S.C. § 434(b)

2 U.S.C. § 441b(a)

2 U.S.C. § 441f

11 C.F.R. § 110.4(b)(1)(i)-(iv)

11 C.F.R. § 114.2(b), (d), (e)

INTERNAL REPORTS CHECKED: FEC Database

FEDERAL AGENCIES CHECKED: None

I. INTRODUCTION

NATA, an incorporated trade association, and Eric Byer, a former officer of NATA, filed *sua sponte* submissions (respectively, the "NATA Submission" and "Byer Submission") addressing two possible violations of the Federal Election Campaign Act of 1971 (the "Act"). First, the Submissions indicate that, between December 2001 and August 2012, NATA increased the compensation of twenty (20) employees to reimburse those employees for a total of \$214,353 in contributions made in their names to NATA PAC, the separate segregated fund of NATA.⁴ Second, they allege that, during the same period, the former treasurer of NATA PAC, Michael Delk, did not examine or certify the accuracy of any disclosure reports filed with the

⁴ NATA Submission at 11. NATA also acknowledges that one of the employees who allegedly permitted her name to be used in connection with \$21,104 in reimbursed contributions was not a member of NATA's restricted class from whom it was permitted to solicit contributions under 2 U.S.C. § 441b(b)(2) and 11 C.F.R. § 114.7(a). *Id.* The Report does not contain a separate analysis or recommendations regarding this admitted violation because we are already pursuing NATA/NATA PAC for violations of section 441b(a) in relation to the reimbursed corporate contribution scheme and the section 441b(b)(2) violation concerns the same operative facts as the sections 441b(a) and 441f violations.

1 Commission with his electronic signature as Treasurer.⁵ NATA represents that it no longer
2 employs the former executives who caused it to reimburse PAC contributions and that its new
3 leadership has taken corrective and remedial measures to prevent any reoccurrence.⁶

4 The Commission also received responsive submissions from James Coyne, former
5 NATA President/CEO ("Coyne"), Alan Darrow, former NATA Vice-President ("Darrow"),
6 neither of whom cooperated with NATA's own internal review of the allegations, and Michael
7 Delk, former NATA PAC Treasurer ("Delk"), who did cooperate with NATA's internal review.⁷
8 Coyne and Darrow both deny culpability for any violations resulting from the contribution
9 reimbursement plan, although Darrow admits that his salary was increased to cover contributions
10 he made in his name to NATA PAC.⁸ For his part, Delk admits that as Treasurer he failed to
11 review or sign NATA PAC's disclosure reports between 1998 and 2013.⁹

12 Based on the available information currently before the Commission, we recommend that
13 the Commission: (1) merge Pre-MURs 563 and 564 and open one Matter Under Review;
14 (2) find that there is reason to believe that NATA, NATA PAC and Jason Miller in his official
15 capacity as treasurer, violated 2 U.S.C. §§ 441b, 441f, and 434(b) and 11 C.F.R. §§ 110.4(b)(1),
16 114.2; (3) find that there is reason to believe that former NATA VP Eric Byer knowingly and
17 willfully violated 2 U.S.C. §§ 441b and 441f and 11 C.F.R. § 110.4(b)(1)(ii) and 114.2(e);
18 (4) find that there is reason to believe that former NATA PAC Treasurer Michael Delk violated

⁵ *Id.* at 13.

⁶ *Id.* at 14.

⁷ See Coyne Resp. (Nov. 22, 2013); Darrow Resp. (Nov. 21, 2013); Delk Resp. (Sept. 9, 2013); Delk Amended Resp. (Dec. 2, 2013); NATA Submission at 3. NATA is currently engaged in ongoing litigation with Coyne and Darrow regarding issues unrelated to its Submission. NATA Submission at 2.

⁸ Coyne Resp. at 11; Darrow Resp. at 2-3, 9.

⁹ Delk Amended Resp. at 2-3.

1 2 U.S.C. § 434(a)(1) in his personal capacity; (5) take no action as to NATA President/CEO
2 James Coyne; (6) take no action as to former NATA VP Alan Darrow other than to issue a letter
3 of caution; (7) take no action as to NATA employees Shannon Chambers, Mike France, Amy
4 Hornaday, Rebecca Mulholland, Johanna O'Toole, and Jacqueline Rosser, other than to issue
5 letters of caution; and (8) take no action as to former NATA VP Joseph Burnside. We further
6 recommend that the Commission authorize pre-probable cause conciliation as to those
7 Respondents subject to a reason to believe finding.¹⁰

8 **II. FACTUAL SUMMARY**

9 **A. Background**

10 NATA is a national incorporated membership organization (trade association)
11 representing aviation business service providers.¹¹ NATA is governed by a Board of Directors
12 and its day-to-day operations are handled by its president, officers, and staff.¹² James Coyne was
13 NATA's President/CEO from 1998 to 2012.¹³ Alan Darrow was NATA's Director of Finance
14 and Administration and later its Vice-President of Administration beginning in 1995 until his
15 retirement in 2009.¹⁴ Eric Byer served at NATA as its Government Affairs Specialist from 1999

¹⁰ Byer requests Fast Track Resolution ("FTR") or referral of the matter to the Alternative Dispute Resolution Office ("ADRO"). Byer Submission at 1. As some of the violations appear to be knowing and willful, the matter is not eligible for FTR, nor does it warrant referral. See Policy Regarding Self-Reporting of Campaign Finance Violations (*Sua Sponte* Submissions), 72 Fed. Reg. 16,695, 16,698 (Apr. 5, 2007) ("*Sua Sponte* Policy").

¹¹ NATA Submission at 1, 7. See generally <http://www.nata.aero/About-NATA.aspx> (last visited Apr. 21, 2014).

¹² NATA Submission at 1.

¹³ Coyne Resp. at 5.

¹⁴ Darrow Resp. at 1.

1 to 2003, Director of Government and Industry Affairs from 2003 to 2004, and Vice-President of
2 Government & Industry Affairs from 2004 to August 2012.¹⁵

3 NATA established NATA PAC on September 28, 1998.¹⁶ Michael Delk was the PAC
4 treasurer from 1998 until his resignation in July 2013.¹⁷ Delk operates a NATA member
5 company and resides in Salem, Oregon.¹⁸ Delk reports that all PAC disclosure reporting related
6 matters were handled by an Assistant Treasurer located at NATA headquarters.¹⁹ Although he
7 claims not to recall having this responsibility, Darrow was designated as the PAC Assistant
8 Treasurer from 2001 to 2002.²⁰ Burnside was PAC Assistant Treasurer from 2002 to 2003.²¹
9 Byer was the PAC Assistant Treasurer from October 2003 to October 2012.²² NATA PAC also
10 retained an outside consultant who worked with Byer to file NATA PAC disclosure reports with
11 the Commission.²³

¹⁵ Although in his interview with NATA, Byer indicated that he had been promoted to Chief Operating Officer, counsel for NATA states that NATA had no such position. See E-Mail from Matthew Sanderson, Counsel, to Kimberly Hart, FEC (Mar. 6, 2014) ("Sanderson March 6, 2014 E-Mail").

¹⁶ NATA Submission at 4; see NATA PAC, Statement of Organization (Sept. 28, 1998),

¹⁷ Delk Amended Resp. at 2, 3, 5.

¹⁸ *Id.* at 1, 2.

¹⁹ *Id.* at 3, 5-6.

²⁰ See NATA PAC, Amended Statement of Organization (May 22, 2001).

²¹ See *id.*, Amended Statement of Organization (July 19, 2002).

²² See *id.*, Amended Statement of Organization (Oct. 16, 2003).

²³ NATA Submission, App. B, Interview Memo for Whitney Burns at 2-3 (June 17, 2013) ("Burns MOI").

B. The Contribution Reimbursement Plan

1. Inception and Operation

In 2001, as Congress began to consider a reauthorization bill for the Federal Aviation Administration, members of NATA expressed concern that NATA PAC was “non-existent” in the political process.²⁴ As a result, Byer and Darrow met to discuss PAC participation.²⁵ During the meeting, they considered whether to pay employees extra compensation that could be diverted through payroll deductions to the PAC.²⁶ Byer claims that he suggested the idea after “picking it up” from colleagues at other trade associations, asserting that reimbursing contributions through compensation was “pretty predominant in other groups.”²⁷ When asked about this meeting during NATA’s internal review, Byer initially could not recall Darrow’s reaction to the idea, but in a subsequent interview recalled that Darrow spoke in favor of the plan.²⁸

In July 2001, Linda Barker, Chair of NATA and NATA PAC, presented the NATA Board of Directors with a recommendation to reimburse NATA employees for their contributions to NATA PAC.²⁹ The Board approved that recommendation and recorded it in the meeting minutes as follows: “The Board agreed with a recommendation by Mrs. Barker that

²⁴ NATA Submission at 5.

²⁵ *Id.*

²⁶ NATA Submission at 5; *see id.*, App. B, Interview Memo for Eric Byer at 5 (June 27 and Aug. 9, 2013) (“Byer MOI”).

²⁷ Byer MOI at 4. During NATA’s second interview with Byer, he stated that he initially suggested to Darrow that NATA employees contribute to the PAC from their own personal funds and claimed that he wanted the employee contributions to be “above-board.” *Id.*

²⁸ Byer MOI at 4; NATA Submission at 5.

²⁹ NATA Submission, App. B, Interview Memo for Linda Barker at 4 (June 17, 2013) (“Barker MOI”).

1 interested staff members may make contributions to the PAC and that, if legal, the association
2 can 'gross up' their salaries to offset the contribution."³⁰ Coyne was present at this meeting as a
3 member of the Board, Darrow attended as "Staff," and Delk attended as a "Guest."³¹ Byer is not
4 listed as an attendee.³² In her interview, Barker did not recall any details beyond what was
5 recorded in the Minutes, but noted that "it was pretty much staff driven if I remember correctly.
6 I don't think I came up with that idea."³³ Barker "supposed" she worked with Coyne on the PAC
7 but did not recall having any discussions with Darrow or Byer.³⁴

8 After the NATA Board meeting, either Byer or Darrow then explained how to make the
9 reimbursements to the payroll manager, Johanna O'Toole, and Byer told her to enroll the
10 employees.³⁵ The first salary increases and corresponding payroll deductions began in
11 December 2001.³⁶ Initially, each participating employee's pay was increased \$3,900 per year,
12 \$3,000 of which was deducted as a contribution to NATA PAC and the additional \$900 intended
13 to cover any tax liability resulting from the increased pay.³⁷ NATA states that in 2009, PAC
14 contributor's salaries were increased at Byer's request to \$6,500 per year, with up to \$5,000

³⁰ NATA Submission, App. E, Minutes for NATA Board of Directors Meeting in Couer d'Alene, Idaho (July 9-10, 2001) ("Board of Directors Meeting Minutes").

³¹ *Id.*

³² *Id.*

³³ Barker MOI at 2.

³⁴ *Id.* at 3.

³⁵ NATA Submission, App. A, Aff. of Johanna O'Toole ¶¶ 6-8 (Aug. 1, 2013) ("O'Toole Aff.").

³⁶ NATA Submission at 5.

³⁷ O'Toole Aff. ¶¶ 10-11; NATA Submission at 5-6; *see* NATA Submission, App. F, Salary and Bonus Worksheets (2012-2011, 2009-2004) ("NATA Salary and Bonus Worksheets").

1 deducted as a PAC contribution and \$1,500 intended to offset tax liability.³⁸ As a result of this
2 arrangement, between December 2001 and August 15, 2012, 20 NATA employees, including
3 Byer and Darrow, made \$214,353 in contributions to NATA PAC in their names using NATA
4 funds.³⁹

5 NATA counsel asserts that Byer initially denied that he knew that any NATA employees'
6 compensation had been increased to reimburse contributions until counsel presented him with
7 e-mails that showed Byer solicited employees to participate in the contribution reimbursement
8 plan, at which point Byer acknowledged his involvement.⁴⁰ The NATA payroll manager,
9 O'Toole, states that she was present for a discussion between Byer and Darrow after the program
10 began during which they discussed how the program would operate.⁴¹ She recalls that Byer
11 discussed the amount the employees would receive and described how that amount would then
12 be deducted and contributed to NATA PAC.⁴² According to her, Darrow responded that this
13 could not be done unless there was also an amount provided to each employee to account for the
14 increased taxes the employee would incur.⁴³ In his affidavit provided in conjunction with his
15 Response, Darrow claims that he does not recall the meeting but that "it would not have been

³⁸ O'Toole Aff. ¶ 11; NATA Submission at 6; NATA Salary and Bonus Worksheets.

³⁹ NATA Submission at 6-7. NATA stated that it has no information to suggest that the compensation arrangement was extended to non-employees or to employees who gave to committees other than NATA PAC. *Id.* at 7.

⁴⁰ Byer MOI at 3.

⁴¹ O'Toole Aff. ¶ 6.

⁴² *Id.*

⁴³ *Id.* O'Toole also stated that it was her understanding that the additional compensation was based on an employee's willingness to contribute to NATA PAC, and was intended to cover both the amount of each employee's contribution to the PAC and the increased tax each employee might experience because of the additional salary. *Id.* ¶ 7.

1 unreasonable for me to attend such a meeting or express concern about employees being
2 personally responsible for any tax liability resulting from their increased compensation” and that
3 “it is not uncommon . . . to increase compensation . . . to offset certain benefits that employees
4 must pay directly.”⁴⁴

5 Notwithstanding the indication in the minutes of the July 2001 Board meeting that the
6 Board’s approval was contingent on the legality of the program, Byer asserts that he does not
7 recall anyone at NATA seeking legal advice concerning the lawfulness of the proposed
8 contribution reimbursement plan before it was implemented.⁴⁵ But Whitney Burns, NATA’s
9 outside PAC consultant, contends that she told Byer in approximately 2001 that contributions
10 must be voluntary and could not be compensated, and further asserts that she provided Byer with
11 materials regarding the prohibition against reimbursed contributions.⁴⁶ In his first interview with
12 counsel for NATA, Byer did not recall any conversation with Burns regarding the legality or
13 propriety of the contribution reimbursement plan.⁴⁷ In a second interview, however, he stated
14 that he recalled that Burns told him that employees could contribute to the PAC and that
15 employees could make their contributions via payroll deduction, but continued to assert that he

⁴⁴ Darrow Aff. ¶ 4.

⁴⁵ Byer MOI at 4.

⁴⁶ Burns MOI at 4, 5. In addition, Burns recalled faxing Byer a five-page excerpt from the Commission’s campaign guide for corporations, but this excerpt did not address the prohibitions on corporate contributions and contributions in the name of another. *Id.*, App. E (copy of the facsimile of the five-page excerpt); *see also id.*, App. F, Email from Whitney Burns to Eric Byer and Kristen Moore (Apr. 2, 2010) (stating that “[i]t is each employee’s decision as to how much to contribute to the PAC, not the accounting office’s decision. Attached is a form we may want to start using for the employees to authorize their deductions and make changes. You can suggest and recommend amounts, but it is ultimately the employee’s decision how much and when (up to the \$5000 annual contribution limit.)”). Byer claimed that he recalled having a conversation with Burns in which she advised him that employees could legally contribute to the PAC and could do so through payroll deductions, but does not recall talking about the proposal to compensate employees for their PAC contributions. *See* Byer MOI at 4, n.7.

⁴⁷ Byer MOI at 4.

1 could not recall any discussion about increased employee compensation related to PAC
2 contributions.⁴⁸

3 In its Submission, NATA asserts that most of the employees whose contributions to the
4 PAC were reimbursed lacked sufficient experience or knowledge of the program to suspect that
5 the arrangement might be prohibited.⁴⁹ Others did not question the arrangement because Byer
6 assured them that it was common practice.⁵⁰ Some employees claim that they raised concerns
7 with Byer about the arrangement. For instance, Timothy Heck had a conversation with Byer
8 about the PAC contribution program shortly after he was hired as NATA's Vice-President of
9 Financial Operations in October 2009.⁵¹ During this conversation, Heck raised concerns about
10 the propriety and legality of the PAC contribution program, and Byer assured him that
11 everything was "above the table."⁵² According to Heck, Byer further responded that he had
12 "checked it out" with NATA's PAC consultant.⁵³ Heck stated that, despite Byer's assurance, the
13 PAC contribution program did not "look kosher" and he was not comfortable with participating,
14 so he did not.⁵⁴

15 According to O'Toole, she overheard a "heated" conversation between Heck and Byer
16 after Heck asked her to explain the way the reimbursement program worked.⁵⁵ She states that

⁴⁸ *Id.* at 4, n. 7.

⁴⁹ NATA Submission at 9.

⁵⁰ *Id.*

⁵¹ NATA Submission, App. B, Interview Memo for Timothy Heck at 3 (June 18, 2013) ("Heck MOI").

⁵² Heck MOI at 3.

⁵³ *Id.* at 4.

⁵⁴ *Id.* at 3.

⁵⁵ O'Toole Aff. ¶ 17.

1 she did not hear the entire conversation but heard Heck say something to the effect of "You can't
2 do it. It's not legal," to which Byer responded, "Everybody does it. The program will
3 continue."⁵⁶ O'Toole did not recall hearing any description of why Heck believed the program
4 was illegal or improper.⁵⁷ According to O'Toole, this was the first time that she had heard
5 anything about the program that made her question whether it was "right."⁵⁸ After several casual
6 conversations with Heck in which he told her that he would not be involved with the program
7 and suggested that she terminate her participation, she withdrew as well.⁵⁹ In his interview, Byer
8 recalled that Heck may have raised an issue about it because he would have been making sure
9 that it was "above board because Tim is an above-board guy."⁶⁰ In addition, Mike France,
10 another NATA employee, claims that Byer or Kristen Moore told him that while NATA could
11 not contribute money to the PAC directly, "it was okay" and "totally legal" for NATA to "give
12 the money to employees for the contribution."⁶¹

13 Table 1 identifies the gross amount and last date of contributions to NATA PAC made in
14 the names of NATA employees whom NATA compensated for the costs associated with their
15 contributions.⁶² Those employees who made prohibited contributions within the still applicable
16 five-year limitations period as of June 30, 2014, are identified in bold-faced type.

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.* ¶ 19.

⁵⁹ *Id.*

⁶⁰ Byer MOI at 5. Byer stated that he could not recall any other details about the conversation. *Id.*

⁶¹ NATA Submission, App. B., Aff. of Mike France ¶ 6 (July 15, 2013) ("France Aff.").

⁶² See NATA Submission at 6.

1

Table 1. — Contributions by Individuals Within the Limitations Period

Name	Title	Total Amount	Last Contribution	Amount Within SOL	Relevant SOL Dates ⁶³
David Almy	VP, Marketing & Comm.	\$9,750	11/30/2008	\$0	N/A
Stephen Beaulieu	Manager, Leg. Affairs	\$11,000	01/31/2008	\$0	N/A
Justin Bryant	Manager, Gov't & Industry Affairs	\$625	04/15/2008	\$0	N/A
Joseph Burnside ⁶⁴	VP, Gov't & Industry Affairs	\$5,250	10/15/2003	\$0	N/A
Eric Byer	VP, Gov't & Industry Affairs	\$39,229	8/15/2012	\$13,196	8/26/14 - 4/15/17
Shannon Chambers	Director, Mktg. & Communications	\$13,222	08/15/2012	\$9,198	1/30/15 - 2/15/17
Alan Darrow	VP, Administration	\$23,875	06/15/2009	\$2,750 ⁶⁵	6/30/14 - 8/15/14
Brian Fitch	Manager, Technical Services	\$987	04/30/2004	\$0	N/A
Michael France	Director, Safety & Training	\$15,022	08/15/2012	\$9,614	3/26/15 - 2/15/17
Amy Hornaday	Manager, Admin. & Finance	\$13,104	08/15/2012	\$7,696	3/26/15 - 2/15/17
David Kennedy	Director, Gov't & Industry Affairs	\$5,875	12/31/2003	\$0	N/A
Daniel Kidder	Director, Communications	\$3,625	02/15/2006	\$0	N/A
Stan Mackiewicz	Rep., Gov't & Industry Affairs	\$14,750	11/30/2008	\$0	N/A
Lindsey McFarren	Director, Safety Operations	\$1,750	08/31/2007	\$0	N/A
Ashley Moore	Manager, Gov't & Legis. Affairs	\$1,500	07/31/2007	\$0	N/A
Kristen Moore ⁶⁶	Director, Legis. Affairs	\$19,273	04/30/2011	\$12,072	7/30/14 - 6/30/17
Rebecca Mulholland	Executive Asst.	\$21,104	08/15/2012	\$12,696	7/26/14 - 2/15/17
Johanna O'Toole	Comptroller	\$3,787	05/15/2010	\$3,787	3/26/15 - 11/15/15

⁶³ These limitations dates are based on the latest tolling agreement provided by NATA and NATA PAC on May 26, 2014 and Eric Byer on May 20, 2014.

⁶⁴ Burnside left NATA on December 31, 2003.

⁶⁵ Because NATA and NATA PAC tolled the limitations period for an additional 60 days, the \$2,750 contribution in the name of Darrow has not expired as to them. Darrow has not tolled, however, and therefore none of his contributions remain viable under the five-year limitations period as to him.

⁶⁶ Kristen Moore did not cooperate in NATA's investigation, did not join in NATA's Submission, and was not notified by CELA. We therefore make no recommendation as to Kristen Moore.

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Name	Title	Total Amount	Last Contribution	Amount Within SOL	Relevant SOL Dates ⁶³
Jacqueline Rossier	Director, Reg. Affairs	\$2,875	11/30/2002	\$0	N/A
Elizabeth Van Emburgh	Manager, Gov't and Industry Affairs	\$7,750	07/31/2006	\$0	N/A
Total Prohibited Contributions:		\$214,353			
Viable Amount as of June 30, 2014 Under Applicable Tolling Agreements:		\$71,009			

2. The Roles of Byer, Coyne, and Darrow

NATA is a party in an ongoing arbitration proceeding against both Coyne and Darrow. In its Submission, NATA asserts that both Coyne and Darrow "appear to have played a role in maintaining the compensation arrangement."⁶⁷ Nonetheless, it also asserts that "firm conclusions are difficult to draw about the PAC-related roles of Mr. Coyne and Mr. Darrow due to their refusals to accept NATA's interview requests under reasonable terms."⁶⁸

Coyne's Response to the NATA Submission denies having played any role in maintaining the contribution reimbursement plan.⁶⁹ Rather, he asserts that he delegated primary responsibility for the day-to-day management of the PAC operations, including the contribution reimbursement plan, to Darrow and then to Byer during the relevant time frame, with the assistance of Burns, the professional consultant to NATA PAC.⁷⁰ Coyne claims he delegated PAC responsibilities to avoid any claim of conflict concerning his dealings with former

⁶⁷ NATA Submission at 7.

⁶⁸ *Id.* NATA asserts that Darrow, through counsel, denied its interview requests. *Id.*, n. 45. Coyne, through counsel, agreed to be interviewed only if NATA would pay \$875 per hour plus expenses. *Id.*; see App. D (correspondence with Coyne and Darrow's counsel regarding the interview requests). NATA concluded that it would be inappropriate to pay such costs in conjunction with its internal investigation. *Id.* at 7.

⁶⁹ Coyne Resp. at 1.

⁷⁰ *Id.* at 1, 5. Indeed, before allegedly delegating those responsibilities to Darrow, Coyne claims he delegated responsibilities for NATA PAC operations to former Vice-President Andrew Cebula in 1998. *Id.* at 1.

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1 colleagues in the House of Representatives.⁷¹ The Response further asserts that Coyne never
2 participated in the contribution reimbursement program himself and was not aware that any
3 employee's salary was being "grossed up" for the purpose of making contributions to NATA
4 PAC.⁷² According to Coyne, he assumed that the proposed plan had undergone the appropriate
5 legal vetting once it was implemented by those to whom he delegated responsibility for the
6 PAC's operations.⁷³

7 It appears from the information provided to date that Coyne was present when the NATA
8 Board approved the contribution reimbursement plan, but that he did not play a central role in
9 PAC operations, was not involved in the day-to-day handling of the plan itself, and did not make
10 any reimbursed contributions in his name.⁷⁴

⁷¹ *Id.* at 6. Publicly available information indicates that Coyne served as a member of the U.S. House of Representatives from the 8th Congressional District of Pennsylvania from 1981 to 1983. *See* [http://history.house.gov/People/Listing/Coyne,-James-Kitcherman,-II-\(C0000845\)/](http://history.house.gov/People/Listing/Coyne,-James-Kitcherman,-II-(C0000845)/) (last visited on June 9, 2014).

⁷² Coyne Resp. at 5.

⁷³ *Id.*

⁷⁴ Coyne Resp. at 5-12; *see* Byer MOI at 3, 6. It is possible that Coyne may have played some role in NATA PAC operations or may have encouraged employee participation in the PAC contribution reimbursement program. *See id.*, Interview Memo for Stephen Beaulieu at 3 (June 14, 2013) ("Beaulieu MOI") ("I was talking with [Byer] and Jim Coyne and they brought up the program and asked was I on board with it and I said 'fine'"); *see id.*, Interview Memo of David Kennedy at 4 (June 14, 2013) ("Kennedy MOI") ("I presume it was [Byer] because he managed it. It may have been Jim Coyne."); O'Toole Aff. ¶ 21 (stating that she never spoke to Coyne about the reimbursement scheme, but opining that Coyne probably was aware of the program and authorized it); *see id.*, Interview Memo of David Almy at 2, 5, 6 (June 18, 2013) ("Almy MOI") (stating that he did not interact with Coyne very often but suggesting that Coyne may have been involved with the NATA PAC solicitation process); *see id.*, Interview Memo for Lindsay McFarren at 4 (June 13, 2013) ("McFarren MOI") (stating that she contributed because she thought that Coyne would have expected it and that agreeing might financially benefit her). Other witnesses were unable to provide any specific information suggesting that Coyne was significantly involved in either the operation of the PAC or the contribution reimbursement program in particular. *See id.*, Interview Memo of Justin Bryant at 4 (June 17, 2013) ("Bryant MOI") (stating that Darrow or Byer may have explained the details of the contribution reimbursement plan, but it was not Coyne); Byer MOI at 5 (stating that Coyne did not get into any issues involving the PAC because he believed that it was "bad policy to have the president involved with the PAC"); Heck MOI at 4 (stating that he did not speak with Coyne and that "Byer ran the show" with the PAC); *see id.*, Interview Memo for Stan Mackiewicz at 3 (June 26, 2013) ("Mackiewicz MOI") (stating that he had no recollection of having discussions with Coyne about the PAC); *see id.*, Interview Memo for Ashley Moore at 4 (July 18, 2013) ("A. Moore MOI") (stating that she never discussed the PAC with Coyne); *see id.*, Interview Memo for Elizabeth Olkowski at 4 (June 18, 2013) ("Olkowski MOI") (stating that she had no discussions about the PAC with Coyne).

1 In a separate Response, Darrow denies that Coyne ever delegated primary responsibility
2 for PAC operations to him and instead asserts that it was Burnside who supervised Byer in
3 overseeing the PAC in 2001.⁷⁵ Darrow asserts that his involvement with the contribution
4 reimbursement plan was limited to consenting to Byer's request to use the payroll system to
5 reimburse contributions after the Board approved the program, and receiving reimbursement for
6 his own contributions to NATA PAC — which he claims Byer assured him was lawful.⁷⁶

7 In the affidavit provided in conjunction with his Response, Darrow further asserts that he
8 does not recall consenting to be Assistant Treasurer for NATA PAC and was not aware that he
9 had been designated as Assistant Treasurer until he reviewed the NATA Submission.⁷⁷ Darrow
10 admits that he was reimbursed for the \$23,875 in contributions made to NATA PAC between
11 2002 and 2009 but asserts that his decision to participate in the program was based upon Byer's
12 assurance that the contribution reimbursement plan was permissible under a special exception for
13 trade associations, and that Byer had confirmed this with the PAC consultant retained by NATA
14 PAC.⁷⁸ However, at least two other NATA employees, including Byer and O'Toole, have
15 indicated that Darrow was involved in certain aspects of the contribution reimbursement plan.⁷⁹

16 As to Byer, he claims that he was a lower-level employee when the contribution
17 reimbursement plan was first proposed and approved by the Board and then implemented, and
18 that Darrow was the NATA official who would have been responsible for obtaining legal advice

⁷⁵ Darrow Resp. at 4.

⁷⁶ *Id.* at 3-4.

⁷⁷ Darrow Aff. ¶ 12. Darrow also denies that he was a NATA corporate director. *Id.* ¶ 2.

⁷⁸ *Id.* ¶ 5; see NATA Salary and Bonus Worksheets.

⁷⁹ Byer MOI at 3-5; O'Toole Aff. ¶¶ 6, 7.

1 concerning the legality of the plan.⁸⁰ The Submission states that Darrow was assisted in
2 administering the PAC by Byer, who was a "specialist" in the government affairs department at
3 that time.⁸¹ The Submission concludes, based on its internal review of documents and
4 interviews, that Byer "undertook a substantial ongoing role in maintaining the compensation
5 arrangement."⁸² It further concludes that, although Byer may not have been a manager or an
6 officer in the early years of the plan, he was primarily responsible for soliciting NATA
7 employees' participation in the PAC contribution program and coordinating with NATA's
8 payroll coordinator to handle the appropriate salary increases and payroll deductions for NATA
9 PAC contributions even after he was promoted to officer status in 2004.⁸³ In addition, Byer
10 supervised Kristen Moore, the NATA employee who assumed these PAC-related responsibilities
11 upon Byer's promotion in 2004 to Vice-President of Government and Industry Affairs, as well as
12

⁸⁰ Byer Submission, Byer Decl. ¶ 7.

⁸¹ NATA Submission at 4.

⁸² *Id.* The NATA Submission also indicates that while Byer knew of the corporate prohibition, he never considered how the corporate prohibition related to the NATA payroll deduction program that he initiated and supervised. *Id.* at 10-11; Byer MOI at 5. It also asserts that Byer's claim is given some credence by the "plain and open way in which he described the arrangement throughout internal records and correspondence." NATA Submission at 11.

⁸³ Byer MOI at 2-3; NATA Submission, App. A, Aff. of Rebecca Mulholland ¶ 4 (July 2, 2013) ("Mulholland Aff.") (stating that Byer solicited her for participation in the contribution program and explained how the program would work); O'Toole Aff. ¶¶ 4-13 (stating the role that she played in enrolling NATA employees in the contribution reimbursement program under Byer's instruction); Beaulieu MOI at 2-4 (stating that Byer and Coyne approached him about participating in the program); Bryant MOI at 3-4 (stating that it could have been Byer or Darrow who communicated to him that he would be receiving additional income in connection with his PAC contribution); *see id.*, Interview Memo for Brian Fitch at 2-3 (June 26, 2013) ("Fitch MOI") (stating that Byer talked to him about the "PAC thing" but he could not recall how he came to sign up for the PAC contributions); Mackiewicz MOI at 2-3 (stating that he generally recalled Byer pitching the idea of his participation in the PAC contribution program); McFarren MOI at 4 (stating that while he could not recall the details of how he came to participate in the PAC contribution program, he thought that it was Byer who approached him about participating since he ran the Legislative Affairs side); Moore MOI at 3 (stating that it was Byer who solicited his participation in the contribution reimbursement program); *see also* App. G (providing Byer-related e-mails regarding employee enrollment in contribution programs and payroll deduction confirmation).

1 other employees until his termination in 2012.⁸⁴

2 **C. NATA PAC Disclosure Reports Filed With Unauthorized Signatures**

3
4 According to the Submission, Michael Delk, NATA PAC's Treasurer from 1998 until
5 2013, never reviewed, examined, or signed any of the electronically filed disclosure reports that
6 NATA PAC submitted to the Commission, although each report bears his signature.⁸⁵ Therefore,
7 the Submission acknowledges NATA PAC's "reports were not properly verified under
8 Commission rules because they featured the signature of an individuals who did not examine
9 them and certify their accuracy" in violation of 2 U.S.C. § 434(a)(1) and 11 C.F.R. § 104.18(g).⁸⁶

10 Delk states that when Byer recruited him to serve as Treasurer in 1998, he assured him
11 that the treasurer's duties would be handled by an assistant treasurer who would also be a staff
12 member of NATA working in Virginia, where NATA and NATA PAC operations were based.⁸⁷
13 Accordingly, he never reviewed, examined, or signed any of NATA's disclosure reports, but
14 notes that he also did not authorize anyone to sign or file the reports electronically on his
15 behalf.⁸⁸

⁸⁴ Byer MOI at 2 (stating that in 2003 or 2004, he spent one-fourth of this time on government affairs and usually had a full-time lobbyist working under him — a position held by Stephen Beaulieu and then Kristen Moore); *Id.* at 2 (sating that Byer "turned over the day-to-day management to Kristen Moore" four years before Burns's interview in 2013).

⁸⁵ NATA Submission at 13. NATA began filing its PAC reports electronically in 2001. *Id.* at 13.

⁸⁶ *Id.*

⁸⁷ Delk Amended Resp. at 2. Delk also states that he did not have any professional experience as a treasurer. *Id.* Although Delk claims that Byer recruited him for the position of treasurer in 1998, NATA's records indicate that Byer did not begin his employment with NATA until 1999. See Sanderson March 6, 2014 E-Mail. It is possible that Delk is mistaken regarding the NATA staff member who recruited him to be PAC Treasurer but clear as to his lack of participation in any substantive form as treasurer.

⁸⁸ Delk Amended Resp at 3. Delk's assertion that he never authorized any reports is confirmed by the statements of Burns, the PAC consultant who prepared and filed NATA PAC's disclosure reports. Burns MOI at 2-3. According to the consultant, Burns, she worked directly with Byer on PAC disclosure matters until he was promoted (in 2004) and turned over the day-to-day management of those matters to Kristen Moore. *Id.* at 2. However, as to the use of his signature, the consultant stated that it "was implicit" that others could sign on Delk's

1 **D. Corrective Actions**

2 NATA contends that its internal review determined that the contribution reimbursement
3 plan and inadequate filing practices resulted from the actions of a few former executives whose
4 campaign-finance related activities were inadequately monitored, pointing to NATA and the
5 PAC's "immature control structure at the time and because of a lack of education about federal
6 campaign finance laws" among NATA Board members and employees.⁸⁹ NATA asserts that its
7 leadership has moved quickly and decisively to address these issues in a manner recommended
8 by its legal counsel.⁹⁰ NATA further claims that it should not itself bear liability for the scheme
9 because its employees acted outside the scope of the Board's approval when they either failed to
10 confirm the program's legality or possibly acted despite understanding that the arrangement may
11 be prohibited.⁹¹

12 NATA has undertaken a number of corrective actions since it uncovered the unlawful
13 conduct, including: (1) replacing the executives and consultants involved in the contribution
14 reimbursement plan with more experienced professionals to ensure the organization's future
15 compliance with federal campaign finance laws; (2) hiring three new compliance firms to consult
16 with on an ongoing basis; (3) hiring of a new Executive Vice-President (James Coon) with 30
17 years of legislative and political experience to replace Byer;⁹² (4) hiring of a certified public
18 accountant, Jason Miller, as an independent Chief Financial Officer and PAC Treasurer;

behalf and that "it was something that we talked about." *Id.* at 3. After receiving approval, she filed the disclosure reports, *id.*, which featured Delk's signature. NATA Submission at 13.

⁸⁹ NATA Submission at 14.

⁹⁰ *Id.*

⁹¹ *Id.* at 10.

⁹² NATA's counsel informed OGC in January 2014 that Coon recently resigned from NATA.

(5) adopting formal articles of organization;⁹³ (6) adopting internal policies such as regular employee compliance training, and a biennial audit by outside compliance firm; and (7) recommending that NATA's Board and a new NATA PAC Board more closely monitor the activities of those NATA executives who perform PAC-related duties.⁹⁴

III. LEGAL ANALYSIS

A. Reimbursed Contributions

The Act prohibits corporations from making contributions to a federal political committee (other than independent expenditure-only political committees)⁹⁵ and further prohibits any officer of a corporation from consenting to any such contribution by the corporation.⁹⁶ Likewise, a political committee is prohibited from knowingly receiving prohibited contributions.⁹⁷ The Act also provides that "no person shall make a contribution in the name of another person."⁹⁸ That prohibition extends to knowingly permitting one's name to be used to effect the making of a contribution in the name of another or, under the Commission's implementing regulation, to knowingly helping or assisting "any person in making a contribution

⁹³ NATA Submission at 14; *id.*, App. L, NATA PAC Articles of Organization (July 17, 2012).

⁹⁴ NATA also ratified a Political Activity Policy that has been distributed to all employees and will be provided to all future hires. NATA Submission at 15; *id.*, App. L, NATA PAC Political Activity Policy. That policy, among other things, expressly prohibits the reimbursement of political contributions, describes rules applicable to the political activity of NATA employees, and establishes clear lines of responsibility for approving certain conduct. *Id.*

⁹⁵ See, e.g., Advisory Op. 2010-11 (Commonsense Ten) (concluding that corporations and unions may make unlimited contributions to independent-only political action committees because "independent expenditures do not lead to, or create the appearance of *quid quo pro* corruption") (citing *Citizens United v. FEC*, 558 U.S. 310, 359 (2010)) (emphasis in original).

⁹⁶ 2 U.S.C. § 441b(a); 11 C.F.R. § 114.2(b), (e). A corporation's solicitation of its executive and administrative personnel for contributions to its separate segregated fund is not considered a contribution or expenditure. See *id.* § 441b(b)(2); 11 C.F.R. §§ 114.1(a)(2)(iii), 114.7(a).

⁹⁷ 2 U.S.C. § 441b(a); 11 C.F.R. § 114.2(d).

⁹⁸ 2 U.S.C. § 441f; 11 C.F.R. § 110.4(b)(1)(i).

1 in the name of another.”⁹⁹ The Commission has explained that the provisions addressing those
2 who knowingly assist a conduit-contribution scheme apply to “those who initiate or instigate or
3 have some significant participation in a plan or scheme to make a contribution in the name of
4 another.”¹⁰⁰

5 The Act prescribes additional monetary penalties for violations that are knowing and
6 willful.¹⁰¹ A violation of the Act is knowing and willful if the “acts were committed with full
7 knowledge of all the relevant facts and a recognition that the action is prohibited by law.”¹⁰²
8 This does not require proving knowledge of the specific statute or regulation the respondent
9 allegedly violated.¹⁰³ Instead, it is sufficient to demonstrate that a respondent “acted voluntarily
10 and was aware that his conduct was unlawful.”¹⁰⁴ This may be shown by circumstantial evidence
11 from which the respondents’ unlawful intent reasonably may be inferred.¹⁰⁵ For example, a

⁹⁹ 11 C.F.R. § 110.4(b)(1)(ii), (iii).

¹⁰⁰ Explanation & Justification for 11 C.F.R. § 110.4, 54 Fed. Reg. 34,105 (Aug. 17, 1989) (“E&J”).

¹⁰¹ See 2 U.S.C. § 437g(a)(5)(B), (d).

¹⁰² 122 Cong. Rec. 12,197, 12,199 (May 3, 1976).

¹⁰³ *United States v. Danielczyk*, ___ F. Supp. 2d ___, 2013 WL 124119, *5 (E.D. Va. Jan. 9, 2013) (quoting *Bryan v. United States*, 524 U.S. 184, 195 & n.23 (1998) (holding that, to establish a violation is willful, government needs to show only that defendant acted with knowledge that conduct was unlawful, not knowledge of specific statutory provision violated)).

¹⁰⁴ *Id.* (citing jury instructions in *United States v. Edwards*, No. 11-61 (M.D.N.C. 2012), *United States v. Acevedo Vila*, No. 08-36 (D.P.R. 2009), *United States v. Fieger*, No. 07-20414 (E.D. Mich. 2008), and *United States v. Alford*, No. 05-69 (N.D. Fla. 2005)).

¹⁰⁵ *Cf. United States v. Hopkins*, 916 F.2d 207, 213 (5th Cir. 1990) (quoting *United States v. Bordelon*, 871 F.2d 491, 494 (5th Cir. 1989)). *Hopkins* involved a conduit contributions scheme, and the issue before the Fifth Circuit concerned the sufficiency of the evidence supporting the defendants’ convictions for conspiracy and false statements under 18 U.S.C. §§ 371 and 1001.

1 person's awareness that an action is prohibited may be inferred from "the elaborate scheme for
2 disguising . . . political contributions."¹⁰⁶

3 1. NATA Made and NATA PAC Accepted Prohibited Contributions Made in
4 the Names of Others
5

6 Former NATA executives Byer and Darrow, who at different times each served as
7 Assistant Treasurer of NATA PAC, caused NATA to use corporate funds to reimburse
8 employees for contributions to NATA PAC.¹⁰⁷ Under the direction of Darrow from 2001 to
9 2003, and Byer from 2003 to 2012, NATA increased the salaries of those employees who agreed
10 to make a contribution in their names to NATA PAC to offset the cost of the contributions and
11 any resulting tax liability.¹⁰⁸ This scheme resulted in the reimbursement of \$214,353 in
12 contributions and continued for eleven years. Accordingly, there is reason to believe that NATA
13 made and NATA PAC and its treasurer in his official capacity accepted prohibited contributions
14 made in the names of others.

15 Moreover, in approving the contribution reimbursement program, the Board stipulated
16 that "interested staff members may make contributions to the PAC and that, if legal, the

¹⁰⁶ *Id.* at 214-15. As the *Hopkins* court noted, "It has long been recognized that 'efforts at concealment [may] be reasonably explainable only in terms of motivation to evade' lawful obligations." *Id.* at 214 (quoting *Ingram v. United States*, 360 U.S. 672, 679 (1959)).

¹⁰⁷ In addition, a principal is liable vicariously for the acts of its agent committed within the scope of that agency. *RESTATEMENT (THIRD) OF AGENCY* § 7.07; see also *United States v. Sun-Diamond Growers of Cal.*, 138 F.3d 961 (D.C. Cir. 1998) (affirming criminal convictions against Sun-Diamond in connection with a corporate contribution reimbursement scheme where officer hid the scheme from others in corporation but acted to benefit the corporation). In prior enforcement actions, the Commission has, on that basis, found that legal entities such as NATA and NATA PAC may have violated the Act as a result of the conduct of their officers or employees. See MUR 6515 (PFFW) (finding reason to believe that Professional Firefighters of Wisconsin, a union, knowingly and willfully violated 2 U.S.C. § 441b and 441f based on the activities of its executive board members); MUR 6143 (Galen Capital) (finding reason to believe that Galen Capital, a corporate entity, knowingly and willfully violated 2 U.S.C. § 441b and 441f based on the activities of an executive board member). Because the Board approved and adopted the reimbursement program itself, we need not rely on the principle of vicarious liability here.

¹⁰⁸ Darrow was delegated the responsibility for the PAC operations in 2001. *Coyne Resp.* at 1. Byer took over those responsibilities in 2003 when he was promoted from NATA's Government Affairs Specialist to Director of Government and Industry in 2003. See Sanderson March 6, 2014 E-Mail.

1 association can 'gross up' their salaries to offset the contributions."¹⁰⁹ Despite the Board's
2 acknowledgment that "grossing up" a contribution using NATA funds may be prohibited, the
3 Board apparently did nothing to ensure that anyone took any step to assess the program's
4 legality. Instead, the reimbursement scheme was implemented and continued its course for
5 eleven years without any supervision or inquiry from any member of the NATA and NATA PAC
6 Board notwithstanding that stated concern. Accordingly, there may also be a fair basis to
7 support a finding that NATA acted knowingly and willfully in connection with the contribution
8 reimbursement scheme it authorized.

9 Nonetheless, as a matter of policy the Commission has concluded that it may in
10 appropriate circumstances "[r]efrain from making a formal finding that a violation was knowing
11 and willful, even where the available information would otherwise support such a finding."¹¹⁰ In
12 this matter, NATA and NATA PAC not only made a full *sua sponte* submission but have
13 cooperated extensively, brought substantial information to the attention of the Commission in
14 connection with the matter, and have voluntarily incorporated significant remedial and
15 compliance measures in their practices. For this reason we recommend that the Commission
16 refrain from making a formal finding that there is reason to believe that NATA or NATA PAC
17 knowingly and willfully violated the Act and Commission regulations.

18 We therefore recommend that the Commission find reason to believe that the National
19 Air Transportation Association violated 2 U.S.C. §§ 441b(a) and 441f and 11 C.F.R.
20 §§ 110.4(b)(1)(i) and 114.2(b). Further, we recommend that the Commission find reason to
21 believe that the National Air Transportation Association PAC and Jason Miller in his official

¹⁰⁹ NATA Submission at 5; *see id.*, Board of Directors Meeting Minutes.

¹¹⁰ *Sua Sponte* Policy, 72 Fed. Reg. at 16,696.

1 capacity as treasurer violated 2 U.S.C. §§ 441b(a) and 441f and 11 C.F.R. §§ 110.4(b)(1)(iv) and
2 114.2(d).

3 2. The Commission Should Take No Action Concerning the Allegation that
4 Coyne Violated the Act
5

6 Coyne was the President/CEO of NATA during the course of the reimbursement plan, a
7 participating member of the NATA Board of Directors when it approved the contribution
8 reimbursement scheme, and was generally aware of the subsequent implementation of the plan.
9 Nonetheless, he contends that he "had absolutely no reason to believe that the PAC's managers
10 would adopt any employee contribution program that was not entirely legal."¹¹¹ Coyne further
11 claims that he did not know whether Byer, Darrow, or anyone else had sought legal advice
12 before implementing the compensation reimbursement scheme, but assumed that someone had,
13 given the Board's explanation that its approval was premised on the program's legality.¹¹²
14 Moreover, Coyne apparently delegated primary responsibility for the operations of NATA PAC
15 to Vice-President Darrow, who in turn was assisted by Byer, a government affairs specialist.¹¹³

16 The Act prohibits a corporate officer from consenting to the making of a contribution
17 using corporate funds.¹¹⁴ In its previous enforcement actions, the Commission generally has
18 found reason to believe that officers consented to making or accepting prohibited contributions
19 only as to officers that actively engaged in the conduct at issue, either by initiating or

¹¹¹ Coyne Resp. at 5.

¹¹² *Id.* at 5. Although Darrow was also listed as Assistant Treasurer of the PAC from 2001 to 2002, he denies that he ever consented to serve as the PAC's Assistant Treasurer. Darrow Aff. ¶¶ 2, 12. He claims that he never signed NATA PAC's amended statement of organization designating him as its Assistant Treasurer nor was he aware that any filings designating him as were made such until he received the Submission in connection with this matter. *Id.* ¶¶ 2, 9-16.

¹¹³ Coyne Resp. at 5.

¹¹⁴ 2 U.S.C. § 441b(a); 11 C.F.R. § 114.2(e).

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1 implementing that unlawful activity.¹¹⁵ Here, Coyne appears to have had little involvement in
2 operating the contribution reimbursement scheme, other than to have been present for a vote of
3 the Board and thus generally aware of the program's existence. Thus, unlike those individuals
4 against whom the Commission previously has found reason to believe, Coyne does not appear to
5 have actively participated in the unlawful conduct of the corporation. We therefore recommend
6 that the Commission take no action concerning the allegation that NATA President/CEO James
7 Coyne violated 2 U.S.C. § 441b and 11 C.F.R. § 114.2(e) by consenting to the making of a
8 contribution to NATA PAC using corporate funds.

9 3. The Commission Should Take No Action As to the Allegation that Alan
10 Darrow Violated the Act
11

12 Darrow asserts that he does not recall consenting to serve as NATA PAC Assistant
13 Treasurer and that he was not aware he was designated as such until he reviewed the
14 Submission.¹¹⁶ Nonetheless, NATA PAC's contemporaneous filings with the Commission
15 identified Darrow as the Assistant Treasurer from 2001 to 2002.¹¹⁷ Darrow further denies having
16 "overall financial responsibility for PAC operations" as NATA asserted in its Submission.¹¹⁸
17 Instead, Darrow contends that Byer was responsible for the NATA PAC operations¹¹⁹ Darrow

¹¹⁵ See MUR 6515 (PFFW) (finding reason to believe as to executive board members who created and implemented fraudulent reimbursement scheme to benefit themselves); MUR 6143 (Galen) (finding reason to believe as to executives, including President of corporation, who directed the activity involving making and accepting prohibited contributions made in the names of others).

¹¹⁶ Darrow Aff. ¶ 12.

¹¹⁷ See NATA PAC, Amended Statement of Organization (May 14, 2001),

¹¹⁸ Darrow Resp at 2, 4

¹¹⁹ Darrow Resp at 2, 4; Darrow Aff ¶ 13. Darrow contends that "it is clear that NATA was searching for justifications to blame a scapegoat and did not make an effort to unearth all points of view." Darrow Resp. at 8. He further asserts that NATA has sought to use the present Commission proceeding "to influence the ongoing arbitration with Coyne and Darrow." *Id.* at 8.

1 asserts that his involvement with NATA PAC was limited to consenting to Byer's request to use
2 NATA's payroll system to implement the deduction program and his own receipt of
3 reimbursements for his contributions to NATA PAC through that program.¹²⁰

4 Despite his claims to the contrary, other employees recall that Darrow participated in the
5 contribution reimbursement program and that he was involved in its formation. Specifically,
6 O'Toole asserts that Darrow spoke in favor of the proposal at its inception.¹²¹ She further recalls
7 that Darrow insisted that any increase in compensation should include an amount to offset
8 additional taxes that employees might incur as a result.¹²² Darrow was also present at the Board
9 meeting when the contribution reimbursement plan was approved.¹²³ Further, Coyne states that
10 he delegated responsibility for PAC operations initially to Cebula and later to Darrow and
11 Byer.¹²⁴ Moreover, Darrow does not deny that he himself made contributions in his name for
12 which he was reimbursed as a result of the program, although he contends he did so based on
13 Byer's assurance that it was legal.¹²⁵

14 Given the information concerning Darrow's level of involvement, there may be sufficient
15 information to support a finding that Darrow, as a corporate officer, violated 2 U.S.C. § 441b by

¹²⁰ Darrow Resp. at 3-4. Darrow denies knowing, until recently, that contribution reimbursements were illegal. Darrow Aff. ¶ 6. Darrow also denies knowing whether Byer or anyone else confirmed the legality of the arrangement. *Id.*

¹²¹ O'Toole Aff. ¶ 6. As stated previously, Darrow did not recall the meeting but claimed that it would not have been uncommon for him to attend such a meeting or to express concern regarding employees being personally responsible for any tax liability resulting from their increased compensation. *See* Section II.B at 8.

¹²² *Id.*

¹²³ NATA Board Meeting Minutes (noting that Darrow was present as "Staff"); Barker MOI at 1-2 (Barker, who later became NATA PAC Chair because she was also Chair of NATA described herself as a "figurehead" of NATA PAC and stated that the idea for the reimbursement plan was "staff driven").

¹²⁴ Coyne at 1.

¹²⁵ Darrow Aff. ¶¶ 5, 17.

1 consenting to the making of contributions using corporate funds. Nonetheless, under the
2 circumstances presented here, we do not recommend that the Commission make such a finding.
3 Despite the substantial investigation undertaken by NATA counsel, the evidence of Darrow's
4 involvement in the scheme remains mixed. And most critically, Darrow's conduct as a NATA
5 official in connection with the program involves dealings from June 2009, now outside the
6 limitations period. We therefore recommend that the Commission take no action as to the
7 allegation that Darrow, as a NATA officer, consented to the making of a prohibited corporate
8 contribution in violation of 2 U.S.C. § 441b and 11 C.F.R. § 114.2(e), and issue a letter of
9 caution. We further recommend that the Commission take no action, other than to issue a letter
10 of caution, as to Darrow's liability as a conduit for contributions from NATA made in his name
11 in violation of 2 U.S.C. § 441f and 11 C.F.R. § 110.4(b)(1)(ii) because no such contributions
12 remain within the limitations period.¹²⁶

13 4. Eric Byer Knowingly and Willfully Consented to the Making of
14 Prohibited Contributions in the Names of Others and Permitted His Name
15 to be Used to Make Prohibited Contributions in the Name of Another
16

17 The available information supports the conclusion that Byer played an integral role in the
18 contribution reimbursement scheme — first as a NATA employee and then as a NATA officer
19 — during its entire eleven-year existence. Byer originated the idea for the contribution
20 reimbursement plan, presented the proposal to NATA officer Darrow, solicited employee
21 participation in the contribution reimbursement program, worked with staff to enroll employees
22 in the program, and oversaw the day-to-day management of the PAC operations.¹²⁷ And

¹²⁶ See NATA Submission at 6; Tbl. 1, *supra* (identifying contributions by individual within the applicable limitations period).

¹²⁷ See Byer MOI at 4 (explaining that he was responsible for bringing the idea of the contribution reimbursement plan to NATA); Chambers Aff. ¶ 2; France Aff. ¶ 4; Mulholland Aff. ¶ 4; Beaulieu MOI at 4; McFarren MOI at 3, A. Moore MOI at 3; Olkowski MOI at 3 (Byer "probably" solicited his reimbursed

1 although Byer claims that he believed the compensation program was lawful, the substantial
2 weight of the available information belies that assertion.

3 The record here reflects that Byer likely acted knowingly and willfully when engaging in
4 the conduct that constitutes a violation of the Act. Burns — a consultant NATA PAC hired to
5 assist in filing Commission disclosure reports — specifically recalled discussing the proposed
6 compensation-reimbursement scheme with Byer.¹²⁸ She represented that she told Byer that
7 NATA employees could not be given a raise or bonus to cover the costs of their contributions to
8 NATA PAC and that she provided Byer with materials that explained the requirements for the
9 soliciting of restricted class employees for PAC contributions.¹²⁹ In addition, in his government
10 affairs role, Byer authored numerous NATA documents concerning campaign finance laws,
11 including correspondence informing NATA members and employees about the restrictions and
12 prohibitions on corporate contributions under the Act and Commission regulations, further
13 evidencing his sophistication and awareness of the applicable legal requirements governing
14 contributions to NATA PAC.¹³⁰

15 Further, several other employees claimed that they raised concerns directly with Byer
16 about the legality of the program. In particular, Heck claimed that he refused to participate in the

contributions); O'Toole Aff. ¶ 9 (all describing Byer's involvement in the solicitation process and management of contribution program over the years); *see also* NATA Submission, App. G (containing various e-mails with Byer regarding participation in the contribution reimbursement program).

¹²⁸ Burns MOI at 3.

¹²⁹ *Id.*

¹³⁰ *See* NATA Submission, App. I, Documents Authored by Eric Byer that Reference the Prohibition on Corporate Contributions ("Byer Documents") (including correspondence authored by Byer stating, "***BY LAW, CORPORATE CONTRIBUTIONS ARE NOT ALLOWED, ONLY INDIVIDUAL CONTRIBUTIONS**" (emphasis in original)).

1 PAC contribution program and directly challenged Byer concerning its legality.¹³¹ Byer
2 nonetheless informed Heck that the arrangement was "above the table" and "kosher."¹³²
3 O'Toole stated that she overheard portions of that conversation and confirms that she specifically
4 heard Byer tell Heck that "Everybody does it. The program will continue."¹³³ Byer also assured
5 Heck that the program had been vetted and was lawful when, in fact, it appears that Byer had no
6 personal knowledge or reason to believe that any such legal consultation had occurred.¹³⁴
7 Similarly, when NATA employee France asked questions about the arrangement, Byer
8 responded that while NATA could not contribute money to the PAC directly, "it was okay" and
9 "total legal" for NATA to "give money to employees for the contribution."¹³⁵
10 Moreover, although these interactions with Burns, Heck, and France all indicate that Byer
11 was informed by others and therefore had reason to believe that the compensation arrangement
12 may be unlawful, he failed to relay that concern to his superiors or seek further legal advice.
13 Instead, as noted, he assured others that the program was lawful and consistent with industry

¹³¹ Heck MOI at 3.

¹³² *Id.*

¹³³ O'Toole Aff. ¶ 17.

¹³⁴ Byer MOI at 4.

¹³⁵ France Aff. ¶ 6. We note further that Byer was not candid in his first interview with NATA counsel. Byer initially denied knowing anything about the payroll deduction program, claiming that O'Toole and Darrow were responsible for that program. Byer MOI at 3. He also claimed to be unaware that any employees' salaries were increased in connection with their PAC contributions. He admitted his involvement only after counsel showed him an e-mail that he had sent to another NATA employee, Beaulieu, explaining that his salary would be increased to offset any contributions to the PAC. *Id.* Despite that, during his first interview Byer persisted in his assertion that he did not know whether his own salary had been increased to cover his own PAC contributions. *Id.* During his second interview Byer ultimately conceded that he knew that he had been reimbursed for his contributions through salary increases. *Id.* n. 4. In a subsequent affidavit, Byer explained that he was not candid initially because he was "nervous and afraid of getting anyone into trouble about the PAC contribution process." Byer Submission, Byer Decl. ¶ 3. He further stated that upon being shown the Beaulieu e-mail he was "very embarrassed and confused" and wanted to be honest but was having difficulty remembering the various facts about the PAC contribution process. *Id.* ¶ 4.

1 practice.¹³⁶ Accordingly, the available information supports a conclusion that Byer acted in
2 disregard of a known legal obligation in his activities in connection with the contribution
3 reimbursement scheme.

4 We therefore conclude that Byer consented to the use of NATA funds to make
5 contributions in the names of others, and also allowed his name to be used to make contributions
6 in the name of another. Accordingly, we recommend that the Commission find reason to believe
7 that Eric Byer knowingly and willfully consented to NATA making prohibited contributions in
8 violation of 2 U.S.C. § 441b(a) and 11 C.F.R. § 114.2(e).¹³⁷ In addition, we recommend that the
9 Commission find that he knowingly and willfully permitted his name to be used to make
10 prohibited contributions, totaling \$39,229 between 2001 and 2012, in violation of 2 U.S.C.
11 § 441f and 11 C.F.R. § 110.4(b)(1)(ii).

12 **C. The Commission Should Take No Action Concerning the Alleged Conduit**
13 **Employees Other Than to Authorize Letters of Caution**
14

15 While none of the information provided by the NATA employees suggest that any of the
16 NATA officers coerced, pressured, or required their participation in the contribution
17 reimbursement plan, some of the employees indicated that they decided to participate to show

¹³⁶ See Burns MOI at 4 (detailing conversation with Byer in early 2001 regarding the permissibility of solicitation of employees for PAC contributions). Byer claims that Darrow, as the more senior manager, would have been the person to seek legal advice regarding the proposed compensation reimbursement arrangement and to make the decision about going forward with the compensation arrangement. Byer Submission, Byer Decl. ¶ 7. This misses the point — it is not that Byer was the individual who might have been required to seek confirmation of the program's legality that leads us to the conclusion that he knowingly and willfully consented to the making and accepting of prohibited contributions in the names of others, but rather his repeated assurances to other participants, including allegedly his own superiors, that he had obtained the necessary legal opinion when, in fact, he was advised to the contrary by the PAC's consultant as well as other NATA employees.

¹³⁷ Byer was Government Affairs Specialist, a staff position, when the program was implemented and became Vice-President of Government and Industry Affairs on August 15, 2004. See Sanderson March 6, 2014 E-Mail. Therefore, our recommendation concerning his consenting to making and accepting prohibited contributions in the names of others addresses only his activities as a NATA officer and PAC Assistant Treasurer that remain within the limitations period, that is, from December 2008 to August 2012.

1 that they were "part of the team" or otherwise felt they should participate.¹³⁸ NATA claims that
2 many of the employees who participated in the contribution reimbursement plan did not suspect
3 that the reimbursements were illegal,¹³⁹ and the record indicates that those who asked were told
4 that the program was lawful.¹⁴⁰ In keeping with the manner in which the Commission has
5 previously treated conduits who were subordinates and otherwise uninvolved in the promotion of
6 a contribution reimbursement scheme, we recommend that the Commission take no action as to
7 the subordinate NATA employees who allowed their names to be used to make prohibited
8 contributions to NATA PAC, other than to issue letters of caution to Shannon Chambers, Mike
9 France, Amy Hornaday, Rebecca Mulholland, Johanna O'Toole, and Jacqueline Rosser.

10 **D. There Is Reason to Believe that Michael Delk Failed to Fulfill His Duties as**
11 **Treasurer of NATA PAC**
12

13 The circumstances here also support finding reason to believe that former PAC treasurer
14 Michael Delk in his personal capacity violated 2 U.S.C. § 434(a)(1). The treasurer function is
15 not merely ministerial. Treasurers are responsible for the accuracy of the information contained
16 in committee disclosure reports, as well as the timely complete filing of those reports.¹⁴¹

¹³⁸ See, e.g., Beaulieu MOI at 6 (E-mail from Byer to Beaulieu stating "We are going to increase your salary by couple grand . . . so that we can have you contribute to our political action committee, NATA PAC . . . after the PAC contribution, your take home pay should be within a couple of cents of what you would normally be receiving . . . please email both Johanna and I back indicating that you are groovy with this . . ."); France Aff. ¶ 9 ("I was not pressured into participating in the program . . . however, I was told that it was really important and, as a relatively new employee . . . felt I should participate in order to be part of the team"); Mulholland Aff. ¶ 7 ("I felt that I had a choice . . . but I also felt that to be part of the . . . team, I should participate"); McFarren MOI at 3 (McFarren responded, when asked if he felt he had a choice in whether to participate in the PAC, that "It was voluntary with air quotes. I think it was the politically right thing to do as part of office politics go." He also stated that "I never felt like if I didn't, I wouldn't get a promotion . . . It would get me somewhere, but that could've just been my perception."); O'Toole Aff. ¶ 14 ("I was willing to help.").

¹³⁹ NATA Submission at 9.

¹⁴⁰ See France Aff. ¶ 6; Heck MOI at 4.

¹⁴¹ 11 C.F.R. § 104.14(d).

1 Treasurers must also sign each disclosure report.¹⁴² This gives rise to record-keeping
2 obligations. Among them, a treasurer must keep an account of the identification of each person
3 whose contributions aggregate in excess of \$200 within a calendar year, together with the date
4 and amount of each contribution.¹⁴³ "Due to their 'pivotal role,' treasurers may be held
5 personally liable for failing to fulfill their responsibilities under the Act and the Commission's
6 regulations."¹⁴⁴ Thus, the Commission has determined as a matter of policy that it, in addition to
7 knowing and willful violation of their obligations, will proceed against a treasurer in his or her
8 personal capacity "where the treasurer recklessly failed to fulfill the duties imposed by law or
9 where the treasurer has intentionally deprived himself or herself of the operative facts giving rise
10 to the violation."¹⁴⁵

11 Delk was the Treasurer of NATA PAC from 1998 to 2013. He asserts that Byer
12 informed him before he accepted the position that a NATA PAC employee would be designated
13 as the assistant treasurer and in that capacity would be responsible for maintaining NATA PAC's
14 records and filing its necessary disclosure reports with the Commission.¹⁴⁶ Delk therefore admits
15 that he was Treasurer in name only and that he agreed to serve in that office with the
16 understanding he would exercise none of its responsibilities.¹⁴⁷ Delk contends that he fully

¹⁴² 2 U.S.C. § 434(a); 11 C.F.R. §§ 104.1(a), 104.14(a).

¹⁴³ 2 U.S.C. § 434(b)(3)(a).

¹⁴⁴ Statement of Policy Regarding Treasurers' Subject to Enforcement Proceedings, 70 Fed. Reg. at 3, 5 (Jan. 3, 2005) (quoting *FEC v. Toledano*, 317 F.3d 939, 947 (9th Cir. 2003)).

¹⁴⁵ *Id.* at 3-4.

¹⁴⁶ As discussed, NATA did not employ Byer in 1998 when Delk agreed to become Treasurer. Sanderson March 6, 2014 E-Mail. Therefore, Delk may be mistaken concerning who recruited him to become Treasurer.

¹⁴⁷ Although Delk claims to have been unaware that reports were being signed using his electronic signature, it does not appear Delk ever inquired how reports were being submitted to the Commission during his lengthy tenure as Treasurer. Delk Amended Resp. at 2. Burns electronically filed the reports after receiving authorization from

1 delegated his responsibilities as treasurer to his assistant treasurers, whom he characterized as the
2 *de facto* treasurers of NATA PAC.¹⁴⁸ Delk further claimed that he did not know that the NATA
3 PAC reports bore his signature.¹⁴⁹

4 Delk's asserted lack of involvement in the Committee's reporting suggests that he
5 recklessly failed to fulfill the duties of his office as Treasurer under the Act and Commission
6 regulations.¹⁵⁰ Given those circumstances and the lengthy period during which NATA PAC filed
7 reports without the Treasurer's review, we recommend that the Commission find reason to
8 believe that Delk in his personal capacity violated 2 U.S.C. § 434(a)(1) by recklessly
9 disregarding his duties as Treasurer and by failing to review or sign the disclosure reports that
10 certify the accuracy of the information they contain. We further recommend that the
11 Commission find that NATA PAC and Jason Miller in his official capacity as treasurer violated
12 2 U.S.C. § 434(b) by submitting disclosure reports that had not been reviewed, certified, or
13 signed by the designated treasurer.

Byer or whichever staff person she was working with at the time. Burns MOI at 3. She does not recall Delk specifically authorizing the filing of any disclosure reports, but believed that his authorization to use his signature on reports was implicit, that the practice was discussed at the inception of the PAC, and she discussed it with Byer at some point in the past. *Id.*

¹⁴⁸ Delk Amended Resp. at 1-3, 5-6.

¹⁴⁹ *Id.* at 3.

¹⁵⁰ See e.g., Factual and Legal Analysis for John Buchalski at 3, MUR 5646 (Buchalski) (finding reason to believe that the treasurer recklessly failed to perform his duties in case where treasurer "in title only" never handled committee funds and signed blank or incomplete reports prepared by others). Thus, Delk's claim that his lack of involvement was precisely the arrangement agreed to when he became treasurer, see Delk Amended Resp. at 1-2, does not relieve him from his responsibility under the Act and Commission regulations to familiarize himself with the relevant records, conduct appropriate inquiries, and certify the accuracy of NATA PAC's disclosure reports with his signature. See, e.g., Factual and Legal Analysis for Vicki Paisley at 4-6, MUR 6766 (Jackson) (open matter) (finding reason to believe against Committee treasurer Paisley based on her lack of involvement in reviewing the Committee's activities and preparing its disclosure reports). In MUR 6766, Paisley signed the reports after only cursorily perusing their contents. Here, Delk did not review any of the filed reports at all.

1 **IV. PRE-PROBABLE CAUSE CONCILIATION**

2 We recommend that the Commission enter into pre-probable cause conciliation and
3 approve conciliation agreements as to the violations discussed above for (1) National Air
4 Transportation Association, National Air Transportation Association PAC and Jason Miller in
5 his official capacity as treasurer; (2) Eric Byer; and (3) Michael Delk.¹⁵¹

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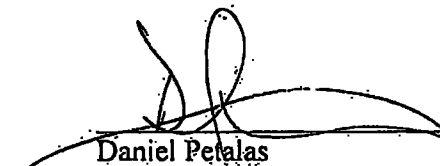
IV. RECOMMENDATIONS

1. Merge Pre-MURs 563 and 564 and open one Matter Under Review;
2. Find reason to believe that National Air Transportation Association violated 2 U.S.C. §§ 441b(a) and 441f and 11 C.F.R. §§ 110.4(b)(1)(i) and 114.2(b);
3. Find reason to believe that National Air Transportation Association PAC and Jason Miller in his official capacity as treasurer violated 2 U.S.C. §§ 441b(a), 441f, 434(b) and 11 C.F.R. §§ 110.4(b)(1)(iv), 114.2(d);
4. Find reason to believe that Eric Byer knowingly and willfully violated 2 U.S.C. §§ 441b(a) and 441f and 11 C.F.R. §§ 110.4(b)(1)(ii) and 114.2(e);
5. Find reason to believe that Michael Delk in his personal capacity violated 2 U.S.C. § 434(a)(1);
6. Take no action as to James Coyne;
7. Take no action as to Alan Darrow, but issue a letter of caution;
8. Take no action as to Shannon Chambers, Mike France, Amy Hornaday, Rebecca Mulholland, Johanna O'Toole, and Jacqueline Rosser, but issue letters of caution;
9. Take no action as to Joseph Burnside;

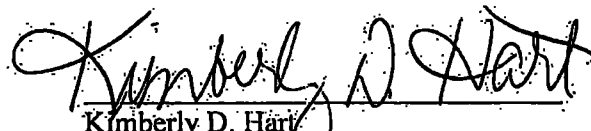
¹⁶¹ Committee records reflect that Delk was replaced as Treasurer on July 13, 2013, almost a year after the violations were discovered. See Delk Amended Response at 5-6; NATA PAC, Amended Statement of Organization (July 13, 2013), (identifying Jason Miller as the new Treasurer). The PAC's disclosure reports reflect that Delk's electronic signature continued to be used through that time. If we were to impose a statutory penalty for each report filed under Delk's name between 2009 and 2013, it would result in a civil penalty in excess of \$344,000.

10. Approve conciliation with National Air Transportation Association, National Air Transportation Association PAC and Jason Miller in his official capacity as treasurer, Eric Byer, and Michael Delk prior to a finding of probable cause to believe;
11. Approve the attached Factual and Legal Analyses;
- 12.
13. Approve the appropriate letters; and
14. Close the file as to Joseph Burnside, James Coyne, Alan Darrow, Shannon Chambers, Mike France, Amy Hornaday, Rebecca Mulholland, Johanna O'Toole, and Jacqueline Rosser.

07/15/14
Date


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